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#12

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MAR 30 2005

Patent

OFFICE OF PETITION

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re utility Patent Application for: )  
Daniel Abeshouse, et al. )  
Application No.: 09/710,097 )  
Filed: November 10, 2000 )  
For: METHOD, APPARATUS, AND )  
SYSTEM FOR PROVIDING )  
VARIABLE MARKET )  
INFORMATION DISCLOSURE )  
IN AN AUCTION )

) Examiner: Weisberger, Richard C.  
Art Group: 3624

EXPRESS MAIL STATEMENT	
"Express Mail" mailing label number: EV336586991US	
Date of Deposit: <u>March 17, 2005</u>	
I hereby state that I am causing this paper or fee to be deposited with the United States Postal Service "Express Mail Post Office to Addressee" service on the date indicated above and that this paper or fee has been addressed to the Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450	
Vanessa Sanchez (Type or printed name of person mailing paper or fee)	
(Signature of person mailing paper or fee) <u>Vanessa Sanchez</u>	
(Date Signed) <u>3-17-05</u>	

MS Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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MAR 24 2005

PETITION UNDER 37 C.F.R. § 1.181(a)  
TO WITHDRAW HOLDING OF ABANDONMENT

GROUP 3600

Sirs:

Applicants hereby petition under 37 C.F.R. § 1.181(a) to withdraw the abandonment of this patent application.

It is respectfully submitted, however, that a timely response to the Office Action dated March 26, 2003 was deposited with U.S. Postal Service on June 26, 2003 as first class mail with a proper Certificate of Mailing under 37 C.F.R. § 1.8.

Enclosed are photocopies of the following that were filed with the United States Patent and Trademark Office on June 26, 2003:

- (1) a copy of a Response to Office Action dated June 26, 2003;
- (2) a copy of a Supplemental Information Disclosure Statement Pursuant to

37 C.F.R. § 1.56 ET SEQ.;

Repln. Ref: 09/07/2005 AKELLEY 0012495300  
DAM:022666 Name/Number:09710097  
FC: 9204 \$1500.00 CR

Adjustment date: 09/07/2005 AKELLEY  
03/22/2005 AWONDAF1 00000010 09710097  
01 FC:1453 -1500.00 OP

- (3) authorization to withdraw \$180.00 from Deposit Account No. 50-0310 for the § 1.17(p) fee for the Supplemental IDS; and
- (4) a copy of a return postcard.

The above-referenced postcard was returned to applicants' attorney by the U.S. Patent and Trademark Office stamped with a date of June 30, 2003 by the mail room of the U.S. Patent and Trademark Office. A copy of such is submitted herewith as Exhibit C.

Given that applicants mailed (1) a Response to Office Action and (2) a copy of a Supplemental Information Disclosure Statement Pursuant to 37 C.F.R. § 1.56 ET SEQ. using the Certificate of Mailing procedures of 37 C.F.R. § 1.8 on June 26, 2003, which was received by the U.S. Patent Trademark Office, applicants respectfully submit that the holding of abandonment is in error.

Applicants believe that this abandonment was a mistake of the Patent and Trademark Office. The Patent and Trademark office mistakenly mailed a Notice of Abandonment on January 18, 2005 with respect to patent application number 09/710,097.

Applicants therefore respectfully request reconsideration and withdrawal of the holding of abandonment of the above-identified patent application on the basis that there was in fact no abandonment.

The following documents that support applicants' request are enclosed as Exhibits to this Petition:

- (A) a copy of a Response to Office Action dated June 26, 2003;
- (B) a copy of a Supplemental Information Disclosure Statement Pursuant to 37 C.F.R. § 1.56 ET SEQ.;
- (C) a copy of a return postcard stamped by the United States Patent and Trademark Office; and

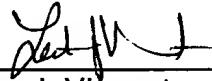
(D) Notice of Abandonment dated January 18, 2005.

On the same date as the mailing of the present petition, Applicants have filed a petition under 37 C.F.R. §1.137(b) for revival of the unintentionally abandoned present application. Should the present petition under 37 C.F.R. §1.181(a) be Granted, Applicants request a refund of the \$1,500 fee paid for the 37 C.F.R. §1.137(b) petition. If there are any charges, please charge Deposit Account No. 02-2666. A duplicate of this Petition is enclosed for deposit account charging purposes.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: March 17, 2005

  
\_\_\_\_\_  
Lester J. Vincent  
Reg. No. 31,460

12400 Wilshire Blvd.  
Seventh Floor  
Los Angeles, CA 90025  
(408) 720-8300

EXHIBITA

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: )  
Daniel ABESHOUSE, et al. )  
Application No.: 09/710,097 ) Group Art Unit: 3624  
Filed: November 10, 2000 ) Examiner: Richard C. Weisberger  
For: METHOD, APPARATUS AND SYSTEM )  
FOR PROVIDING VARIABLE MARKET )  
INFORMATION DISCLOSURE IN AN )  
AUCTION )

MAIL STOP: Fee Amendment  
Assistant Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**AMENDMENT TRANSMITTAL FORM**

1. Transmitted herewith is a response to the Office Action dated March 26, 2003.

2. Additional papers enclosed:

Drawings:  Formal  Informal (Correction)  
 Supplemental Information Disclosure Statement  
 Form PTO-1449A, 8 references included  
 Citations  
 Declaration of Biological Deposit  
 Submission of "Sequence Listing", computer readable copy and/or amendment pertaining thereto for biotechnology invention containing nucleotide and/or amino acid sequence.  
 Declaration

**CERTIFICATE OF MAILING (37 C.F.R. § 1.8)**

I hereby certify that this paper, and the papers and/or fees referred to herein as transmitted, submitted or enclosed, are being deposited on the date shown below with the U.S. Postal Service with sufficient postage as first-class mail in an envelope addressed to Mail Stop: Fee Amendment, Assistant Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Name Kim R. Jessum Signature Kim R. Jessum Date of Deposit June 26, 2003

3. Extension of Time

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136(a) apply.

- Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.
- Applicant petitions for an extension of time, the fees for which are set out in 37 C.F.R. § 1.17(a), for the total number of months checked below:

<u>Total Months Requested</u>	<u>Fee for Extension</u>	<u>Fee for Small Entity</u>
<input type="checkbox"/> one month	\$ 110.00	\$ 55.00
<input type="checkbox"/> two months	\$ 400.00	\$ 200.00
<input type="checkbox"/> three months	\$ 920.00	\$ 460.00
<input type="checkbox"/> four months	\$ 1,440.00	\$ 720.00

Extension of time fee due with this request: \$920.00.

If an additional extension of time is required, please consider this a Petition therefor.

- An extension for \_\_\_\_\_ months has already been secured and the fee paid therefor of \$\_\_\_\_\_ is deducted from the total fee due for the total months of extension now requested.

4. Constructive Petition

- EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a CONSTRUCTIVE PETITION FOR EXTENSION OF TIME in accordance with 37 C.F.R. § 1.136(a)(3).

5. Fee Calculation (37 C.F.R. §1.16)

CLAIMS AS AMENDED						
	Claims Remaining After Amendment		Highest No. Previously Paid	Present Extra	at Rate of	Total Fees
Total Claims (37 C.F.R. §1.16(c))		minus		0	x \$18 each=	+ \$
Independent Claims (37 C.F.R. §1.16(b))		minus		0	x \$84 each=	+ \$
<input type="checkbox"/> First presentation of Multiple dependent claim(s)					\$280.00	+ \$
<b>SUB-TOTAL =</b>						<b>\$</b>
Reduction by ½ for filing by a small entity						<b>- \$</b>
<b>TOTAL FEE =</b>						<b>\$ 0</b>

6. Fee Payment

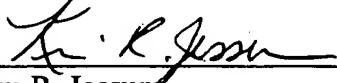
- No fee is to be paid at this time.
- The Commissioner is hereby authorized to withdraw \$180.00 from Deposit Account 50-0310 for the §1.17(p) fee for the Supplemental IDS.
- Check in the amount of \$\_\_\_\_ for \_\_\_\_\_. The Commissioner is hereby authorized to charge any additional extension of time fee or additional fee for claims due to Deposit Account No. 50-0310.
- The Commissioner is hereby authorized to charge any additional fees which may be required, including fees due under 37 C.F.R. §§ 1.16 and 1.17, or credit any overpayment to Deposit Account 50-0310.

Respectfully submitted,

**MORGAN, LEWIS & BOCKIUS LLP**

Dated: June 26, 2003

By:

  
 Kim R. Jessum  
 Reg. No. 43,694

MORGAN, LEWIS & BOCKIUS LLP  
 1701 Market Street  
 Philadelphia, PA 19103  
 Telephone: (215) 963-5000  
 Facsimile: (215) 963-5299

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: )  
Daniel ABESHOUSE, et al. )  
Application No.: 09/710,097 ) Group Art Unit: 3624  
Filed: November 10, 2000 ) Examiner: Richard C. Weisberger  
For: METHOD, APPARATUS AND SYSTEM )  
FOR PROVIDING VARIABLE MARKET )  
INFORMATION DISCLOSURE IN AN )  
AUCTION )

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO OFFICE ACTION**

Dear Sir:

In response to the Office Action mailed March 26, 2003, Applicants respectfully request reconsideration of the subject application in view of the following remarks.

**REMARKS**

Claims 1-21 and 28-59 are currently pending in this application.

**Rejection under 35 U.S.C. §101**

Claims 1-19 and 28-59 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter, lacking any claimed ties to the technological arts.

Applicants respectfully disagree with the Examiner's rejection of the claims as directed to non-statutory subject matter. Each of claims 1-21 and 28-32 are directed to an auction and each of claims 33-59 are direct to an online auction. An auction does not lack "claimed ties to the technological arts," as the Examiner suggests. The law is clear that business methods, in and of themselves constitute statutory subject matter under 35 U.S.C. § 101. State St. Bank & Trust Co.

v. Signature Fin. Group, Inc., 149 F.3d 1368 (Fed. Cir. 1998). Therefore, the Examiner's rejection of claims 1-21 and 28-59 under 35 U.S.C. § 101 should be withdrawn.

**Rejection under 35 U.S.C. §112**

Claims 51-59 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner states that "a system" in the preamble can read as an apparatus or a method.

Applicants respectfully assert that claims 51-59 are apparatus claims. The claims set forth elements of structure that make up the combination claimed, rather than steps or acts that indicate a method. Based on these remarks, Applicants respectfully request that the rejection under 35 U.S.C. § 112 be withdrawn.

**Rejection under 35 U.S.C. §§102(b) and 103(a)**

Claims 20, 21 and 51-59 are rejected under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over FreeMarkets' SEC S-1/A document. The Examiner includes an exert from the SEC S-1/A document that teaches an online auctioning system sold under the name, BidWare®.

Applicants assert that the present invention was neither anticipated nor obvious over FreeMarkets' BidWare® disclosed in the SEC S-1/A document, as well as the additional documents cited in the Supplemental Information Disclosure Statement and Form PTO-1449A submitted simultaneously herewith. As requested, a duplicate copy of the Information Disclosure Statement submitted with Applicants' Petition to Make Special is also enclosed herewith.

The Specification describes the bid data and market feedback as "feedback about market activity," which "includes any information or data related to bidders 30 or their bids or interrelationships between those bids, and any other bid related information or data such as, for example, the quality of goods being sold, that is received before or during the auction 56." Specification, p. 14, lines 21-25. As further described in the specification, [m]arket feedback

may include, for example, bids that have been placed by other bidders 30, the rank of a participants bid in relation to the other bidders 30, the identity of bidders 30 in relation to their bids or rank, or any subset of that information. Market feedback may also include non-pricing information such as, for example, the quality of the goods to be provided by bidders 30 and shipping costs associated with one or more bidders 30." Specification, p. 14, lines 25-30.

Furthermore, "[i]n a certain type of online auction 56, which may be referred to as full market feedback format, all bids 58 are visible to every bidder 30. Bids 58 are sorted from highest to lowest. Thus, each bidder 30 can assess its rank and competitive position if bidders 30 are individually identified, by comparing its current best bid 58 with other bids 58 placed in the online auction 56. In a second type of online auction 56, bidders 30 are provided with only their own current best bid 58 and the current market-leading bid. Bidders 30 are not aware of every bid 58 placed by other participants, but they can assess their competitive position against the current market-leading bid. In one variation of that second type of online auction 56, bidders 30 also receive feedback about their current rank." Specification, p. 15, lines 4-13.

At the time the patent application for the present invention was filed, electronic auctions using BidWare® were conducted as described in the Background of the Invention of the Specification, p. 5, line 1 – p. 7, line 23. Specifically, after participants are invited to participate in an auction, they access the auctions and place bids based on "bids of other bidders 30, their own costs, and potential efficiencies." Specification, p. 7, lines 11-12. Some of these participants that have access to the auction information submit bids late in the auction process or not at all. Specification, p. 7, line 20.

An example of an actual electronic auction using BidWare® is also described in the Jahnke article, "How Bazaar," which is also cited in the Supplemental Information Disclosure Statement submitted herewith. This example discloses an auction event, where participants submit bids at various times and compete to provide the lowest bid. Jahnke, p. 6.

Neither the Background of the Invention nor the Jahnke article disclose "providing the bid data to a competing bidder that meets a condition for receiving the bid data" or "providing market feedback to one or more selected client processors from which the bid server received a valid bid," as required in the claims. Rather, as described in the Jahnke article, p. 1 and the

Background of the Invention of the Specification, p. 7, lines 10-13, bids are viewed, or considered by all bidders, so they can submit a better (lower) bid and the bidders are not identified to each other.

Moreover, the BidWare® Manuals of 1999 and 2000 cited in the Supplemental Information Disclosure Statement and Form PTO-1449A disclose that “[b]idder anonymity is preserved” when viewing bid history and all participants who log into an event may view bid information. BidWare® Manual 2000, p. 6-1 – 6-4; BidWare® Manual 1999, p. 5-1 – 5-4. There is no disclosure of a condition to be met during the auction or a requirement that a bid be placed in order to view the bid data in these manuals.

### CONCLUSION

In view of the foregoing remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Except for issue fees payable under 37 C.F.R. §1.18, the Commissioner is hereby authorized by this paper to charge any additional fees, including fees due under 37 C.F.R. §§1.16 and 1.17 which may be required in relation to this Response, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0310.

Respectfully submitted,

**MORGAN, LEWIS & BOCKIUS LLP**

Dated: June 26, 2003

By: Kim R. Jessum  
Kim R. Jessum  
Registration No. 43,694

MORGAN, LEWIS & BOCKIUS LLP  
1701 Market Street  
Philadelphia, PA 19103  
Telephone: (215) 963-5000  
Facsimile: (215) 963-5299

PLEASE STAMP AND RETURN TO SHOW RECEIPT OF:

In re Application of: Daniel ABESHOUSE et al.

Application No.: 09/710,097

Group Art Unit: 3624

Filed: November 10, 2000

Examiner: R.C. Weisberger

Title: METHOD, APPARATUS AND SYSTEM FOR PROVIDING VARIABLE  
MARKET INFORMATION DISCLOSURE IN AN AUCTION

1. Transmittal (3 pages - ~~in duplicate~~)
2. Response to Office Action (4 pages).
3. Supplemental Information Disclosure Statement (3 pages, with 8 references).
4. Form PTO-1449A (1 page).

Dated: June 26, 2003

Attorney Docket No.: 046700-5015

KRJ

EXHIBIT B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
Daniel ABESHOUSE, et al. )  
Application No.: 09/710,097 ) Group Art Unit: 3624  
Filed: November 10, 2000 ) Examiner: Richard C. Weisberger  
For: METHOD, APPARATUS AND SYSTEM )  
FOR PROVIDING VARIABLE MARKET )  
INFORMATION DISCLOSURE IN AN )  
AUCTION )

**SUPPLEMENTAL INFORMATION DISCLOSURE  
STATEMENT PURSUANT TO 37 C.F.R. §§ 1.56 ET SEQ.**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In accordance with 37 C.F.R. § 1.97(b), the above-identified Applicants cite the following references, which may be material to the examination of this application and in respect of which there may be a duty to disclose in accordance with 37 C.F.R. § 1.56.

This Supplemental Information Disclosure Statement is being filed before the mailing date of a final action and a petition with the required fee set forth in § 1.17(p) is being submitted simultaneously herewith.

In compliance with 37 C.F.R. § 1.98(a), copies of the cited references set forth below and listed on the attached Form PTO-1449A (1 sheet) are provided.

Publications

Jahnke, "How Bazaar", CIO Web Business Magazine, August 27, 1998

"Online bidding software", Electronic Buyers' News, Issue 1072, p86, 1/6p, August 25, 1997

Woolley, "E-muscle", Forbes, March 9, 1998

Andrews, "Auctions Catch the Interest of Hobbyists and Big Business", August 24, 1998

Wilder, "What's Your Bid? – FreeMarkets' real-time online bidding technology lets clients drive downcosts and improve product value", InformationWeek, November 10, 1997

Associated Press, "Auction on Web is Buyer's Market", April 6, 1998

FreeMarkets, Inc., BidWare® for Bidders version 2.7.1, Installation and User Manual, 1999

FreeMarkets, Inc., BidWare® 3.0 Manual, 2000

Applicants respectfully request that these items be considered by the Examiner, and that the Examiner acknowledge consideration of these references by initialing and returning copies of the enclosed Form PTO-1449A with the next official action.

While this Supplemental Information Disclosure Statement may be "material" pursuant to 37 C.F.R. §1.56, it is not intended to constitute an admission that any patent, publication or other information referred to herein is "prior art" for this invention or otherwise material to the patentability of this invention as defined in 37 C.F.R. § 1.56.

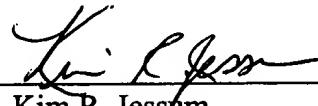
In accordance with 37 C.F.R. § 1.97(g), the filing of this Supplemental Information Disclosure Statement shall not be construed as a representation that a search has been made or that no other material information as defined in 37 C.F.R. § 1.56(b) exists.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees required for the filing of this Supplemental Information Disclosure Statement, including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

June 26, 2003

Date

By: 

Kim R. Jessum  
Reg. No. 43,694  
Customer No. 028977  
MORGAN, LEWIS & BOCKIUS, LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
Telephone: (215) 963-4753  
Facsimile: (215) 963-5299

Substitute for form 1449A/PTO				Complete if Known	
<b>SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>  (use as many sheets as necessary)				<b>Application Number</b>	09/710,097
				<b>Filing Date</b>	November 10, 2000
				<b>First Named Inventor</b>	Abeshouse, et al.
				<b>Group Art Unit</b>	3624
				<b>Examiner Name</b>	Richard C. Weisberger
Sheet	1	of	1	<b>Attorney Docket Number</b>	046700-5015

FOREIGN PATENT DOCUMENTS					
Exr Initials	Foreign Patent Document			Name of Inventor or Applicant of Cited Document	Date of Publication of Cited Document MM-DD-YYYY
	Country Code	Number	Kind Code (if known)		

OTHER PRIOR ART - NON PATENT LITERATURE DOCUMENTS		
Exr Initials	Include Name of Author (in CAPITAL LETTERS), title of the article (where appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published	T <sub>1</sub>
	Jahnke, "How Bazaar", CIO Web Business Magazine, August 27, 1998	
	"Online bidding software", Electronic Buyers' News, Issue 1072, p86, 1/6p, August 25, 1997	
	Woolley, "E-muscle", Forbes, March 9, 1998	
	Andrews, "Auctions Catch the Interest of Hobbyists and Big Business", August 24, 1998	
	Wilder, "What's Your Bid? – FreeMarkets' real-time online bidding technology lets clients drive downcosts and improve product value", Information Week, November 10, 1997	
	Associated Press, "Auction on Web is Buyer's Market", April 6, 1998	
	FreeMarkets, Inc., BidWare® for Bidders version 2.7.1, Installation and User Manual, 1999	
	FreeMarkets, Inc., BidWare® 3.0 Manual, 2000	

EXHIBIT C

PLEASE STAMP AND RETURN TO SHOW RECEIPT OF:

In re Application of: Daniel ABESHOUSE et al.

Application No.: 09/710,097

Filed: November 10, 2000

Title: METHOD, APPARATUS AND SYSTEM FOR PROVIDING VARIABLE  
MARKET INFORMATION DISCLOSURE IN AN AUCTION

Group Art Unit: 3624

Examiner: R.C. Weisberger

1. Transmittal (3 pages - ~~14 pages~~)
2. Response to Office Action (4 pages).
3. Supplemental Information Disclosure Statement (3 pages, with 8 references).
4. Form PTO-1449A (1 page).

Dated: June 26, 2003

Attorney Docket No.: 046700-5015

KRJ

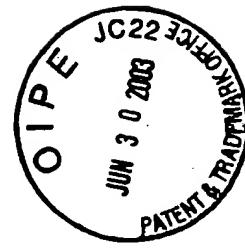


EXHIBIT D



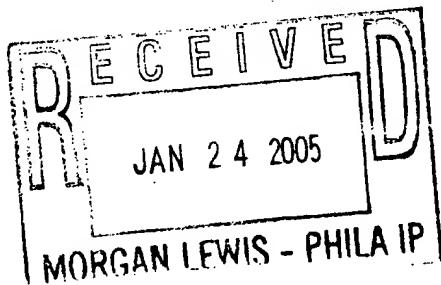
UNITED STATES PATENT AND TRADEMARK OFFICE

DHG  
CJF  
Ariba, Inc. Transferred  
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov  
03600P029

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/710,097	11/10/2000	Daniel Abeshouse	046700-5015	4234
28977	7590	01/18/2005		EXAMINER
MORGAN, LEWIS & BOCKIUS LLP 1701 MARKET STREET PHILADELPHIA, PA 19103-2921			WEISBERGER, RICHARD C	
			ART UNIT	PAPER NUMBER
			3624	

DATE MAILED: 01/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



<b>Notice of Abandonment</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/710,097	<b>ABESHOUSE ET AL.</b>	
	Examiner Richard C Weisberger	Art Unit 3624	

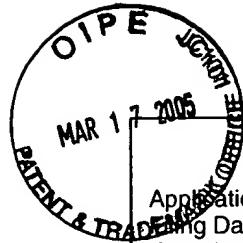
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1.  Applicant's failure to timely file a proper reply to the Office letter mailed on 26 March 2003.
  - (a)  A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b)  A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c)  A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d)  No reply has been received.
2.  Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a)  The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b)  The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c)  The issue fee and publication fee, if applicable, has not been received.
3.  Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a)  Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b)  No corrected drawings have been received.
4.  The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5.  The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6.  The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7.  The reason(s) below:

  
Richard C. Weisberger  
Primary Examiner  
Art Unit: 3624

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

TRANSMITTALPATENT

Application No.: 09/710,097  
Filing Date: November 10, 2000  
First Named Inventor Daniel Abeshouse  
Examiner's Name: Weisberger, Richard C.  
Art Unit: 3624  
Attorney Docket No.: 003660.P029

An Amendment After Final Action (37 CFR 1.116) is attached and applicant(s) request expedited action.

Charge any fee not covered by any check submitted to Deposit Account No. 02-2666.

Applicant(s) hereby request and authorize the U.S. Patent and Trademark Office to (1) treat any concurrent or future reply that requires a petition for extension of time as incorporating a petition for extension of time for the appropriate length of time and (2) charge all required fees, including extension of time fees and fees under 37 CFR 1.16 and 1.17, for any concurrent or future reply to Deposit Account No. 02-2666.

Applicant(s) claim small entity status (37 CFR 1.27).

ATTACHMENTS

Preliminary Amendment

Amendment/Response with respect to Office Action

Amendment/Response After Final Action (37 CFR 1.116) (reminder: consider filing a Notice of Appeal)

Notice of Appeal

RCE (Request for Continued Examination)

Supplemental Declaration

Terminal Disclaimer (reminder: if executed by an attorney, the attorney must be properly of record)

Information Disclosure Statement (IDS)

Copies of IDS citations

Petition for Extension of Time

Fee Transmittal Document (that includes a fee calculation based on the type and number of claims)

Cross-Reference to Related Application(s)

Certified Copy of Priority Document

Other: Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b)

Other: Exhibits A, B and C

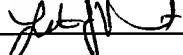
Check(s)

Postcard (Return Receipt)

SUBMITTED BY:

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

TYPED OR PRINTED NAME: Lester J. Vincent

SIGNATURE: 

REG. NO.: 31,460

DATE: March 17, 2005

ADDRESS: 12400 Wilshire Boulevard, Seventh Floor

Los Angeles, California 90025

TELEPHONE NO.: (408) 720-8300

EXPRESS MAIL STATEMENT

I hereby state that I am causing this paper or fee to be deposited with the United States Postal Service "Express Mail Post Office to Addressee" service on the date indicated above and that his paper or fee has been addressed to: Mail Stop Petition, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

March 17, 2005

Date of Deposit

Vanessa Sanchez

Name of Person Mailing Correspondence

Vanessa Sanchez  
Signature

3-17-05

Date

Express Mail Label No.: EV 336587011 US

(10/14/03)

Send to: COMMISSIONER FOR PATENTS, P.O. Box 1450, Alexandria, Virginia 22313-1450

**FEE TRANSMITTAL FOR FY 2005**

Effective on 12/08/2004. Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

**TOTAL AMOUNT OF PAYMENT (\$)** 1,500.00

Complete if Known:

Application No. 09/710,097  
Filing Date November 10, 2000  
First Named Inventor Daniel Abeshouse  
Examiner Name Weisberger, Richard C.  
Art Unit 3624  
Attorney Docket No. 3660P029

Applicant claims small entity status. See 37 CFR 1.27.

**METHOD OF PAYMENT** (check all that apply)

Check  Credit Card  Money Order  None  Other (please identify)

**Deposit Account**Deposit Account Number : 02-2666

Deposit Account Name: \_\_\_\_\_

The Director is Authorized to do the following with respect to the above-identified Deposit Account:

Charge fee(s) indicated below.

Charge any additional fee(s) or underpayment of fee(s) during the pendency of this application.

Charge fee(s) indicated below except for the filing fee

Credit any overpayments.

Any concurrent or future reply that requires a petition for extension of time should be treated as incorporating an appropriate petition for extension of time and all required fees should be charged.

Warning: Information on this form may become public. Credit card information should not be included on this form.  
Provide credit card information and authorization on PTO-2038.

**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES****RECEIVED**

MAR 23 2005

Large Entity	Small Entity	Fee Description	Pes Paid (\$)		
Fee Code	Fee (\$)	Fee Code (\$)			
1011	300	2011	150	Utility application filing fee	1,000/500
1111	500	2111	250	Utility search fee	
1311	200	2311	100	Utility examination fee	
1012	200	2012	100	Design application filing fee	
1112	100	2112	50	Design search fee	430/215
1312	130	2312	65	Design examination fee	
1013	200	2013	100	Plant filing fee	
1113	300	2113	150	Plant search fee	660/330
1313	160	2313	80	Plant examination fee	
1004	300	2004	150	Reissue filing fee	
1114	500	2114	250	Reissue search fee	1,400/700
1314	600	2314	300	Reissue examination fee	
1005	200	2005	100	Provisional application filing fee	

SUBTOTAL (1) \$ 0.00

**2. EXCESS CLAIM FEES**

<u>Extra Claims</u>				<u>Fee from below</u>	<u>Fees Paid (\$)</u>
<b>Total Claims</b>	<b>– 20 or HP =</b>			X	=
HP = highest number of total claims paid for, if greater than 20					
<b>Independent Claims</b>	<b>– 3 or HP =</b>			X	=
HP = highest number of independent claims paid for, if greater than 3					
<b>Multiple Dependent Claims</b>					
<b>Large Entity</b>	<b>Small Entity</b>				
<b>Fee</b>	<b>Fee</b>	<b>Fee</b>	<b>Fee</b>		
<b>Code</b>	<b>(\$)</b>	<b>Code</b>	<b>(\$)</b>		
1202	50	2202	25		
1201	200	2201	100		
1203	360	2203	180		
1204	200	2204	100		
1205	50	2205	25		
<b>Fee Description</b>					
Each claim over 20					
Each independent claim over 3					
Multiple dependent claims, if not paid					
Reissue: each claim over 20 and more than in the original patent					
Reissue: each independent claim more than in the original patent					
<b>SUBTOTAL (2) \$ 0.00</b>					

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

<u>Total Sheets</u>	<u>Extra Sheets</u>	<u>Number of each add'l 50 or fraction thereof</u>	<u>Fee from below</u>	<u>Fees paid (\$)</u>
_____	– 100 = _____ / 50 = _____ (round up to whole number)	X	_____	_____
<b>Large Entity</b>				
<b>Small Entity</b>				
<b>Fee</b>				
<b>Code</b>				
1081				
1082				
1083				
1084				
<b>Fee Description:</b> Application size fee for each additional group of 50 sheets beyond initial 100 sheets (count spec & drawings except sequences & program listings):				
Utility				
Design				
Plant				
Reissue				
<b>SUBTOTAL (3) \$ 0.00</b>				

FEE CALCULATION (continued)4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

<u>Large Entity</u>	<u>Small Entity</u>		<u>Fees Paid (\$)</u>
Fee	Fee	Fee	
Code	(\$)	Code	(\$)
1051	130	2051	65
1052	50	2052	25
1053	130	1053	130
1812	2,520	1812	2,520
1813	8,800	1813	8,800
1804	920*	1804	920*
1805	1,840*	1805	1,840*
1251	120	2251	60
1252	450	2252	225
1253	1,020	2253	510
1254	1,590	2254	795
1255	2,160	2255	1,080
1401	500	2401	250
1402	500	2402	250
1403	1,000	2403	500
1451	1,510	1451	1,510
1452	500	2452	250
1453	1,500	2453	750
1501	1,400	2501	700
1502	800	2502	400
1503	1100	2503	550
1462	400	1462	400
1463	200	1463	200
1464	130	1464	130
1807	50	1807	50
1806	180	1806	180
8021	40	8021	40
1809	790	2809	395
1814	130	2814	65
1810	790	2810	395
1801	790	2801	395
1802	900	1802	900
1504	300	1504	300
1505	300	1505	300
1803	130	1803	130
1808	130	1808	130
1454	1,370	1454	1,370
Other fee (specify)			
Other fee (specify)			
			<b>SUBTOTAL (4) \$ 1,500.00</b>

\*Reduced by Basic Filing Fee Paid

SUBMITTED BY:Typed or Printed Name: Lester J. VincentSignature: Lester J. VincentDate: March 17, 2005Reg. Number: 31,460Telephone Number: 408-720-8300

Send to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450